

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING & REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXXX**

**Petitioner**

**v**

**File No. 119524-001**

**Madison National Life Insurance Company, Inc.**  
**Respondent**

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**Issued and entered**  
**this 9<sup>th</sup> day of September 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On March 1, 2011, XXXXX, on behalf of his son XXXXX<sup>1</sup> (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On March 8, 2011, after a preliminary review of the information received, the Commissioner accepted the request.

The case involves an issue of medical necessity so the Commissioner assigned the matter to an independent review organization (IRO) which completed its review and sent its recommendation to the Commissioner on March 22, 2011.

The Commissioner reviews contractual issues pursuant to MCL 440.1911(7).

**II. FACTUAL BACKGROUND**

The Petitioner receives health care benefits as an eligible dependent under a group policy underwritten by Madison National Life Insurance Company, Inc. (MNL). His benefits are defined in a certificate of group medical insurance (the certificate).

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<sup>1</sup> Born XXXXX

The Petitioner has been diagnosed with atopic dermatitis and has received phototherapy treatments at his dermatologist's office. The dermatologist requested authorization from MNL for a narrow-band ultraviolet B (NB-UVB) home phototherapy device that would allow Petitioner's parents to provide regular treatment of his condition at home.

MNL denied coverage for the device, arguing it was not medically necessary. The Petitioner appealed the denial through MNL's internal grievance process.<sup>2</sup> At the conclusion of that process, MNL issued a final internal adverse determination letter dated January 26, 2011, upholding its denial.

### **III. ISSUE**

Did MNL correctly deny coverage for the home NB-UVB phototherapy device?

### **IV. ANALYSIS**

#### **Petitioner's Argument**

The Petitioner's atopic dermatitis has been treated with multiple topical medications, oral antibiotics, as well as topical steroids. He has also received oral antibiotics to prevent and treat infection. In May 2009 he began undergoing phototherapy treatments at this dermatologist's office.

In September 2009 his parents took him to XXXXX for a second opinion regarding his treatment plan. According to the Petitioner, the XXXXX physicians concurred with the treatment plan and suggested increasing the frequency of the phototherapy treatments from twice a week to three times a week to better control flare-ups.

The Petitioner's dermatologist requested authorization from MNL for an NB-UVB unit for home use and presented studies from medical journals to establish that phototherapy is commonly used to treat atopic dermatitis. The dermatologist explained that the Petitioner was treated with topical and oral medications before he began the phototherapy treatments. The dermatologist further indicated that the phototherapy treatments are effective and there have been significant improvement in the Petitioner's condition. In a February 1, 2011, letter of support of the phototherapy device, the Petitioner's dermatologist wrote:

“... the point of phototherapy is to not have to use topical or oral steroids as frequently; therefore, if he only had to use his topical steroids three times a week, that would only prove that the phototherapy is actually a benefit to him and it is being helpful. It is not advisable to use topical steroids on the skin especially if a

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<sup>2</sup> The group plan is administered by CAM Administrative Services, Inc., which handled the Petitioner's grievance.

child as this does cause significant atrophy, especially when we are using high-potency topical steroids as his insurance company has requested.”

### Respondent’s Argument

MNL does not cover services that are not medically necessary. In “Section 5: Medical Service Limitations,” the certificate contains the following exclusion (p.18):

#### **GENERAL EXCLUSIONS**

The following charges are not Covered Medical Expenses:

- (1) Services or supplies which are not Medically Necessary.

“Medically necessary” is defined on p. 44 of the certificate:

**MEDICALLY NECESSARY (OR MEDICAL NECESSITY)** refers to an intervention, if, as recommended by the treating physician and determined by CAMADS or its designee, it is all of the following:

1. A health intervention for the purpose of treating a medical condition;
2. The most appropriate supply or level of service, considering potential benefits and harms to the covered individual;
3. Known to be effective in improving health outcomes. For existing interventions, effectiveness is determined first by scientific evidence, then by professional standards, then by expert opinion. For new interventions, effectiveness is determined by scientific evidence; and
4. If more than one health intervention meets the requirements of 1 through 3 above, furnished in the most cost-effective manner that may be provided safely and effectively to the covered individual. “Cost-effective” does not necessarily mean lowest price.

A service or item will be covered under the policy if it is an intervention that is an otherwise covered category of service or item, not specifically excluded, and medically necessary. An intervention may be medically indicated yet not be a covered benefit or meet the definition of medical necessity. ...

In its final adverse determination, MNL stated:

... Medical necessity for the requested at home narrowband ultraviolet B phototherapy unit for this X year old child with atopic dermatitis is not substantiated by the submitted documentation and by the information from the phone conversation on 1/19/2011 for the following reasons:

- An at home [NB-UVB] phototherapy is not the most appropriate level of service considering past treatments, current treatment, and potential benefits and harms. The patient's topical treatments do not appear to be maximized. The patient's topical treatments are only applied 3-4 days a week. While it was stated that this is because they are not effective, the treatments in question (topical steroids and topical calcineurin inhibitors) are first line treatments for atopic dermatitis and are known to be effective. It would be acceptable to state that this patient was failing topical treatments if no improvement were documented after using the topical treatments as would typically be prescribed (which is at least daily). However, this has yet to be documented. Given that [NB-UVB] phototherapy is a second or third line treatment, it would not be appropriate to use [NB-UVB] as a primary treatment unless failure to first line treatments has been documented. Furthermore, inappropriate use of [NB-UVB] as a primary treatment would unnecessarily expose a pediatric patient to the risk of future skin cancers. In one item of documentation provided it was stated that the patient was seen in the University of Michigan's dermatology department and that [NB-UVB] was recommended as a treatment, however, there is no documentation submitted to substantiate this (e.g., referral or consultation letter from the University of Michigan) or to what degree (as a primary or supplemental treatment) the [NB-UVB] phototherapy was recommended.

With this explanation medical necessity for the requested at home [NB-UVB] phototherapy unit for this X year old child with atopic dermatitis is not substantiated.

MNL also used the XXXXX to determine if an NB-UVB phototherapy device was medically necessary for treatment of the Petitioner's condition. The XXXXX report indicated:

. . . Given that narrowband ultraviolet B phototherapy is a second or third line treatment, it would not be appropriate to use narrowband ultraviolet B phototherapy as primary treatment unless failure to first line treatments has been documented. Further, inappropriate use of narrowband ultraviolet B phototherapy as a primary treatment would unnecessarily expose a pediatric patient to the risk of future skin cancers.

#### Commissioner's Review

The question of whether a home NB-UVB unit was medically necessary was presented to an independent review organization (IRO) as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a practicing physician who is

board certified in dermatology. The IRO reviewer concluded:

The XXXXX independent physician consultant, who is familiar with the medical management of patients with the member's condition, has examined the medical record and the arguments presented by the parties.

The results of the XXXXX physician consultant's review indicate that this case involves an X year-old male who has a history of atopic dermatitis since infancy. At issue in this appeal is whether a narrowband UVB phototherapy home unit is medically necessary for treatment of the [Petitioner's] condition.

The XXXXX physician consultant indicated that there is an increasing amount of literature to support the use of phototherapy in children. [Citations omitted] The XXXXX physician consultant also indicated that the [Petitioner] has received narrowband UVB phototherapy in his physician's office with improvement in his condition. The XXXXX physician consultant explained that there is no rationale to suggest that in home use of narrowband UVB phototherapy is less safe than in-office use. The XXXXX physician consultant also explained that the [Petitioner] has been maximized on topical medications and has taken systemic agents including prednisone, antibiotics and antihistamines. The XXXXX physician consultant noted that the second opinion consultation that the member received suggested that the next line of treatment would be mycophenolate mofetil, which is very expensive and requires regular blood work. The XXXXX physician consultant indicated that the use of in home narrowband UVB phototherapy is cost effective.

Pursuant to the information set forth above and available documentation, the XXXXX physician consultant determined that a narrowband UVB phototherapy home unit is medically necessary for treatment of the [Petitioner's] condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case.

Therefore, the Commissioner concludes and finds that a home NB-UVB phototherapy unit is medically necessary to treat the Petitioner's condition.

## **V. ORDER**

The Commissioner reverses MNL's January 26, 2011 final adverse determination. MNL shall provide for a home NB-UVB phototherapy unit for Petitioner subject to the provisions of the certificate within 60 days from the date of the Order and shall, within seven days of providing coverage, provide the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877)999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton  
Commissioner